



### Attention Health Care Providers

The California Code of Regulations, Title 17, Section 2500, requires the report of communicable diseases and conditions. To report a case of a communicable disease, contact the City of Long Beach Department of Health and Human Services Epidemiology Program at (562) 570-4302 or by fax at (562) 570-4374.

#### Reportable Communicable Diseases

AIDS	Echinococcosis	Mumps	Swimmer's Itch
Amebiasis	Ehrlichiosis	Non-Gonococcal Urethritis	Syphilis
Anisakiasis	Encephalitis	Paralytic Shellfish Poisoning	Tetanus
Anthrax	Escherichia coli O157:H7	Pelvic Inflammatory Disease	Toxic Shock Syndrome
Babesiosis	Foodborne Disease	Pertussis (Whooping Cough)	Toxoplasmosis
Botulism	Giardiasis	Plague, Human or Animal	Trichinosis
Brucellosis	Gonococcal Infections	Poliomyelitis, Paralytic	Tuberculosis
Campylobacteriosis	Haemophilus Influenzae	Psittacosis	Tularemia
Chancroid	Hantavirus Infections	Q Fever	Typhoid Fever
Chlamydial Infections	Hemolytic Uremic Syndrome	Rabies, Human or Animal	Typhus Fever
Cholera	Hepatitis, Viral	Relapsing Fever	Varicella (Deaths Only)
Ciguatera Fish Poisoning	Kawasaki Syndrome	Reye Syndrome	Vibrio Infections
Coccidioidomycosis	Legionellosis	Rheumatic Fever, Acute	Viral Hemorrhagic Fevers
Colorado Tick Fever	Leprosy	Rocky Mountain Spotted Fever	Water-associated Disease
Conjunctivitis, Acute Infectious of the Newborn	Leptospirosis	Rubella	Yellow Fever
Cryptosporidiosis	Listeriosis	Rubella Syndrome, Congenital	Yersiniosis
Cysticercosis	Lyme Disease	Salmonellosis	
Dengue	Lymphocytic Choriomeningitis	Scombroid Fish Poisoning	
Diarrhea of the Newborn	Malaria	Shigellosis	
Diphtheria	Measles	Smallpox (Variola)	
Domoic Acid Poisoning	Meningitis	Streptococcal Infections	
	Meningococcal Infections	(Outbreaks of Any Type and Individual Cases in Food Handlers and Dairy Workers Only)	

**Reportable Noncommunicable Diseases/Conditions**

**OCCURRENCE of ANY UNUSUAL DISEASE**

**OUTBREAKS of ANY DISEASE**

**Alzheimer's Disease**

**Cancer**

**Disorders Characterized by Lapses of Consciousness**

☎ = Report immediately by telephone.

All other diseases/conditions should be reported by FAX, telephone, or mail within seven (7) calendar days of identification.

† = Report immediately by telephone when two (2) or more cases or suspected cases of foodborne disease from separate households are suspected to have the same source of illness.

☎ = Report immediately by telephone.

☎ FAX = Report by FAX, telephone, or mail within one (1) working day of identification.

*The mission of the City of Long Beach Department of Health and Human Services is to improve the quality of life of the residents of Long Beach by addressing the public health and human service needs ensuring that the conditions affecting the public's health afford a healthy environment in which to live, work and play.*

- Department Management Team**
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  - Darryl M. Sexton, MD  
Health Officer
  - Theresa Marino  
Public Health Bureau Manager
  - Don Cillay  
Environmental Health Bureau Manager
  - Corinne Schneider  
Human and Social Services Bureau Manager
  - Roger Hatakeyama  
Animal Control Bureau Manager
  - Michael Johnson  
Support Services Bureau Manager
  - Nettie DeAugustine  
Preventive Health Bureau Manager

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## First Amendment Issues In Environmental Health: Legal Cases Involving Freedom Of Speech And Defamation

The City of Long Beach Department of Health and Human Services (Health Department) is a local health jurisdiction with local authority of issues related to the public's health. This authority is granted to the local jurisdiction by virtue of the California Health and Safety Code and the California Code of Regulations. Health inspectors, working under this authority and the oversight of the City Health Officer, have the responsibility to ensure the public's health in food service establishments. In addition to this responsibility, the health inspector, more correctly called an Environmental Health Specialist (EHS), has certain constitutional rights to exercise his/her authority to ensure the public's safety.

### Rights of Regulators

#### First Amendment Issues

When examining the legal rights of EHS in performing their duties, a very common approach is to focus on unreasonable search and seizure or Fourth Amendment issues. While these are very important issues, this article will focus instead on First Amendment (freedom of speech) rights of regulators. The article will examine two case studies: One on freedom of speech for a city health inspector in Springfield, Illinois and another case, which examines defamation.

#### Freedom of Speech

The First Amendment guarantees freedom of speech, press, religion, and assembly. In the case of Myers v. Hasara an EHS named Cynthia Myers, from Springfield, Illinois, claimed her First Amendment rights had been violated when she was suspended from work for criticizing the city mayor's decision to allow an unlicensed food facility to continue to operate, despite recommendations from the environmental health department to close. Myers spoke to the manager of the mall where the unlicensed food facility was located and basically stated that the unlicensed facility violated health codes and that the city had decided to ignore it. Myers also told the mall manager that the mall could be held liable for the health dangers posed by the unlicensed food facility. This conversation was relayed to the unlicensed facility owner, who then complained to the mayor. The mayor initially wanted to fire Myers, but it was decided that a five-day suspension would be imposed. Myers sued the mayor and the public health director under the civil rights statute, for violating her First Amendment rights and her due process rights (14th Amendment). Myers won her case on appeal. The court said public employees have certain First Amendment rights to speak on matters of public concern. The court also went on to say, "it is important to good government that public employees be free to expose misdeeds and illegality in their departments. Protecting such employees from unhappy government officials lies at the core of the First Amendment". The city had a duty to enforce the food code, and the unlicensed facility violated the law. The court added, "A specific violation of the law that creates a health risk for the public or a matter of good governance is a matter of public concern and is not simply a matter of an employee grievance". Other factors that influenced the court's decision were that there was no "clear directive" not to comment on the case and there was essentially no disruption of public service. If the department had issued a "clear directive" not to discuss the issue further, it would have raised a legitimate reason for disciplining her. The court also considered the time, place and manner of the employee's speech in terms of causing a disruption of public service, or

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### HIV/AIDS Information

California AIDS Multilingual Hotline  
800-922-AIDS

CDC National HIV/AIDS Hotline  
800-243-7889

*The City of Long Beach  
AIDS Surveillance Program  
also publishes an  
HIV/AIDS Monitoring Report  
that contains additional data  
about AIDS in Long Beach.  
For more information, call  
(562) 570-4311.*

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the creation of confusion or turmoil. Since the inspector had only spoken to a limited audience and her words amounted to a “very limited form of disruption”, the court ruled the city’s action to suspend was unjustified (Sikora, 2001).

**Defamation**  
EHS have a wealth of information regard- ing a variety of different businesses and facilities in the community. The local EHSs know which restaurants have the dirtiest kitchens, which swimming pools have the worst sanitation record and which apartment buildings have the worst vermin problems. As a matter of human nature, this information is often shared with co-workers, family, friends and acquaintances. One issue with dissemi- nation of this potentially embarrassing or financially harmful information is whether the information constitutes defamation.

Defamation is the unprivileged intentional dissemination to a third person of false information about another that causes damage. A statement is defamatory when it tends to expose a person to contempt, hatred, or ridicule; or which causes a person to be shunned or avoided; or which has a tendency to deprive him of the benefits of public confidence or injure him in his occupation. Slander is oral defamation. Libel is written defamation. Slander has a shorter statute of limitations than libel. Newspapers and public media have special protections against defamation lawsuits due to the First Amendment. Actual and factual truth is considered a valid defense against defamation.

There are four general types of defamation: (1) an accusation of criminal behavior or of conviction of a crime; (2) an accusation that a person had, has or carries a loathsome disease; (3) disparagement of a person’s profession or business; and (4) accusing a woman of being unchaste.

EHS do have some protection due to government immunity statutes, however these statutes do not typically protect against intentional torts, which are outside of the employee’s scope of employment. The willful or malicious slander or libel, or defamation performed for personal gain by an EHS will not be protected. With technological advances in communication, the ability to track disparaging remarks is improving. A defamation lawsuit against an EHS is not an imaginary danger.

In the recent case of Catfish Cabin of Monroe, Inc v. State Farm Fire and Casualty Co., the issue of libel against a local restaurant was examined. In this case it was not the health department that was sued, but the insurance company.

Several employees from an insurance company ate at the Catfish Cabin, a seafood restaurant in Louisiana. A short time later several

Communicable Disease Report				
Selected Reportable Diseases for the City of Long Beach				
Disease	May 2002	YTD 2002	May 2001	YTD 2001
AIDS	34	109	16	86
AMEBIASIS	1	4	0	3
CAMPYLOBACTERIOSIS	10	25	5	16
CHLAMYDIAL INFECTIONS	178	810	158	826
GIARDIASIS	5	13	6	21
GONORRHEA	47	228	53	275
H. INFLUENZAE	0	1	0	0
HEPATITIS A	3	17	4	11
HEPATITIS B, acute	3	5	2	6
HEPATITIS C, acute	0	0	0	0
MEASLES	0	1	0	0
MENINGITIS, viral (aseptic)	5	18	4	8
MENINGOCOCCAL INFECTIONS	0	2	0	7
NON-GONOCOCCAL URETHRITIS (NGU)	8	63	8	46
PERTUSSIS	0	0	0	1
RUBELLA	0	0	0	0
SALMONELLOSIS	3	8	2	10
SHIGELLOSIS	1	10	2	17
SYPHILIS, primary and secondary *	5	19	2	8
SYPHILIS, EARLY LATENT (<1 year) *	1	7	1	3
TUBERCULOSIS	6	21	5	7

\* Numbers provisional until investigation is completed.

AIDS Surveillance Program Data		
City of Long Beach Data as of May 31, 2002		
4,146 Total Long Beach City AIDS Cases		(2,403 deceased - 58% Mortality Rate)
4,137 Adult Cases		(2,397 deceased - 58% Mortality Rate)
9 Pediatric Cases		(6 deceased - 67% Mortality Rate)
AIDS Cases by Gender		
	#	%
Male	3,891	94
Female	255	6
AIDS Cases by Race/Ethnicity		
	#	%
White, Not Hispanic	2,577	62
Black, Not Hispanic	717	17
Hispanic	764	18
Asian/Pacific Islander	75	2
American Indian/Alaskan	11	<1
Unknown	2	<1
AIDS Cases by Exposure Category		
	#	%
Male-to-Male contact	3,144	76
Intravenous Drug Use	354	9
Male-to-Male Contact and Intravenous Drug Use	345	8
Heterosexual Contact	198	5
Recipient of Blood/Blood Products Transfusion	24	<1
Hemophilia/Coagulation Disorder	13	<1
Mother at Risk (Perinatal Exposure)	8	<1
Risk Not Reported/Other	60	1

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of the employees became ill. One of the employees sent an e-mail claiming that someone at the Catfish Cabin had intentionally poisoned the food.

The local health department did not find any significant violations upon inspection. The business owners sued State Farm Insurance and the employee who sent the e-mail for defamation.

This case was dismissed. The court ruled that no individual was defamed. According to the e-mail, “someone” supposedly caused the alleged food poisoning. Since there were 38 employees at the Catfish Cabin, it was not possible to identify the one who actually or supposedly caused the alleged food poisoning. Therefore no individual had been personally singled out, and no one was defamed (Sikora, 2002).

The Health Department is in the business of assisting local food service establishments from preventing food-borne illnesses. It is not the goal of the EHS to close restaurants unless they pose a threat to the public’s health. The Health Department views itself as a partner to businesses to ensure they provide conditions in compliance with state laws regarding food safety, and that the food establishment owner is protected from liability, while the public is assured of a safe food experience.

If you have any questions about the Health Department’s Food Inspection Program, please feel free to contact Nelson Kerr, Program Supervisor, at (562) 570-4170. ■

Author: Nelson Kerr, Food Inspection Program Supervisor

References: Sikora, V.A. (2001). The rights of regulators. Journal of Environmental Health 63 (8) 38-39

Sikora, V.A. (2002). Laws on defamation: Could they affect environmental health professionals? Journal of Environmental Health 64 (10) 29

### Health Department Contact Information

General Information  
(562) 570-4000  
www.ci.long-beach.ca.us/health

Alcohol/Drug Rehabilitation  
(562) 570-4100

Animal Control Shelter  
(562) 570-7387

Early Intervention Program/  
HIV Testing/STD Clinic  
(562) 570-4315

Environmental Health  
(562) 570-4132

Immunizations/Walk-In Clinic  
(562) 570-4222

Prenatal Clinic  
(562) 570-4217

Senior Center  
(562) 570-3531

Tobacco Education Program  
(562) 570-8508

WIC Program  
(562) 570-4242

### The Public Health Bulletin

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www.ci.long-beach.ca.us/health

To be added or removed from  
the mailing list, please contact  
Hanan Obeidi at  
(562) 570-4382 or email  
hanan\_obeidi@ci.long-beach.ca.us.

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